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**SUTHERLAND**  
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January 3, 2005

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Cite as Lorianne Updike, *The "Wall of Separation Between Church and State": Constitutional Fact or Fiction?*, 2005 Sutherland J. L. & Pub. Pol'y L22, at <http://www.sjlpp.org/documents/churchstate.pdf>

# The "Wall of Separation Between Church and State": Constitutional Fact or Fiction?

by Lorianne Updike

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## I. INTRODUCTION

In 1801, the United States of America teemed with religious fervor. Evangelism was, as one author described, “the grand absorbing theme” of American life.<sup>1</sup> At this time in the nation’s history, religious toleration was widely expected and accepted and the First Amendment had forever precluded the establishment of a national church. Yet most states yet maintained strong relations with religion in some degree: while some states mandated “equal opportunity” religious contributions by means of a “general assessment” tax,<sup>2</sup> still other states had state-established religions up until 1833, when the last state-church was disestablished in Massachusetts.<sup>3</sup> Although most sects in disestablished states supported the general assessment tax because it bolstered church coffers, not all shared this viewpoint. In particular, in part due to religious persecution from other sects,<sup>4</sup> the Baptists were exceptionally zealous to abolish all monetary state-church relations.<sup>5</sup>

It was this same zeal which prompted the Danbury Baptists of Connecticut to petition their President to elucidate the First Amendment’s Establishment Clause because such was “not specific.”<sup>6</sup> They played on Jefferson’s own predilections by stating that their “inalienable” religious liberties were subject to the whims of the state legislature such that “what religious privileges we enjoy[,] we enjoy as favors granted” by the state.<sup>7</sup> Such a state, the Danbury Baptists claimed, was “inconsistent with the rights of freemen.”<sup>8</sup>

Jefferson wrote back to the Association. As Jefferson anticipated, the letter was thereafter widely published by contemporary newspapers<sup>9</sup> and became near-synonymous with the original intent of the Establishment Clause during the early 1800s.<sup>10</sup> It provided in relevant part:

Believing with you that religions is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature would “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” *thus building a wall of separation between Church and State*. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.<sup>11</sup>

Three-quarters of a century later, the Supreme Court referred to the letter in *Reynolds v. U.S.* and concluded that Jefferson was as an acknowledged advocate and leader of “the measure” and thus the letter could be accepted “almost as an authoritative declaration of the scope and effect of the Amendment thus secured.”<sup>12</sup> After its first official *Reynolds* blessing in 1878, the letter was next referenced by the Court in 1947. Yet this time, its “almost authoritative” interpretation of the Establishment Clause was assumed, *a priori*, the *only* official meaning: “The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach.”<sup>13</sup>

The Supreme Court's wholesale acceptance of Jefferson's *Danbury* interpretation of the Establishment Clause has made the phrase "wall of separation between Church and State" synonymous in minds of many Americans with a basic understanding of the First Amendment's language concerning the relationship between "an establishment of religion" and government in general. The clause and its meaning has resurfaced in the national hot-light in recent months as the Supreme Court declined to decide the propriety, permissibility, and constitutionality of saying the pledge of allegiance in public schools<sup>14</sup>; yet were inclined to dictate that states may discriminate in affording scholarships towards ministerial degrees.<sup>15</sup>

Yet the import and the impact of establishing the correct interpretation of the Establishment Clause demands a more exacting inquiry than an *a priori* assumption. This paper will demonstrate that neither the First Congress nor Jefferson intended the "establishment" and "free exercise" clauses to create an impregnable "wall" between church and state. Instead, both attempted to create a dynamic and symbiotic relationship which allowed and encouraged all to "exercise" their religion freely in both public and private spheres yet pre-empted any mandatory ideology or state, "established" religion. In proving this intent, this article will examine the conflicting religious ideals of Colonial America and the apparent paradoxical church-state relationship it produced, excavate the proposed anti-federalist and federalist solutions for resolving the paradox, probe the intent of the Establishment Clause drafters in drafting the final national solution, and, finally, reconcile Jefferson's evolving personal beliefs with the contents of the *Danbury* letter.

## II. THE DICHOTOMY OF CHURCH-STATE RELATIONS OF JEFFERSON'S TIME

As the following section will demonstrate, Jefferson's colonial contemporaries were deeply committed to two ideals: maintaining a religious people and providing religious freedom. The first ideal was grounded in the *a priori* assumption of the colonists that the virtues necessary for individual self-government and self-governed states were exclusively derived from religious devotion. True religious devotion necessitated, in the minds of the colonists, established, or state-supported, religions. Yet the second ideal—providing religious freedom to the extent it was understood—was of equal import: not only was its attainment the goal which motivated the early pilgrims to colonize, it was intrinsically linked to the freedom of conscience necessary to sustain self-government.

Implementing the two ideals into the emerging political structures proved a difficult task and often resulted in contradictions and confusions. The colonists wrested with this challenge on both a state and national level during the embryonic stages of the nation, resulting in paradoxical solutions which were congruent only in the minds of the colonists.

### A. *The Necessary Virtue of Religion in a Free Society*

The colonists inherited many religious-political conceptions from their European progenitors. The monarchs of Europe ruled by divine right, or a power which presupposed an elect relationship with God.<sup>16</sup> A minimal theology, or a bare belief in God, was thus necessitated to accept and legitimize political power. Indeed, most pre-colonization European sovereigns demanded much more than a bare belief: the marriage of religion and government; wherein power was generated, bequeathed, and reciprocated; required total, unquestioning acceptance of this indissoluble source of ultimate power. This state of affairs had been the dominant archetype in Western civilization for over fourteen centuries and in England for over three centuries.<sup>17</sup> Its entrenchment in American colonizes lasted for approximately a century, wherein Congregationalism, Presbyterianism and England's established religion, Anglicanism, were the established religions<sup>18</sup> of nine colonies, while the remaining four upheld Christianity in general terms.<sup>19</sup> The marriage terminated in most respects<sup>20</sup> when independence was declared and the colonists' perception of "life, liberty and the pursuit of happiness" began to encompass religious liberty.<sup>21</sup> Its end was hailed by the flight of most American Anglican ministers, bound by oath as loyalists to the crown by covenant, to the Mother Country.<sup>22</sup>

Yet even in its colonized beginnings, the American breed of established religion differed from its European cousins<sup>23</sup> in several respects; significant is the American's moorings in covenant theology. Covenant theology centered on the idea that once an individual accepted Christ's mediation, God was bound to grant salvation and prosperity to obedient individuals. Consequently, God was also bound to punish and afflict those who were disobedient to Biblical principles.<sup>24</sup> This "revolutionary"<sup>25</sup> ideology wherein sanctification could be attained at an individual level, independent of the clergy of entrenched religious institutions, broke with established traditions of Europe.<sup>26</sup> The theology's permeance reached even the conception of civil government.<sup>27</sup> In the early colonists' minds, not only did God interact with people only through covenant, but *people* should also interact with each other predominantly through covenant.<sup>28</sup> Thus societies were established into which a person entered a "social compact" with inherent responsibilities and obligations. Such obligations required individual virtue and self-government which allowed one to contribute to the greater good of societal self-government. The Mayflower Compact established a pattern for several early colonial settlements<sup>29</sup> in creating a government based on covenant. In it, the Pilgrims covenanted to perform certain civic responsibilities in return for God's approbation:

Having undertaken for the glory of God, and advancement of the Christian faith, and the honour of our King and country, a voyage to plant the first colony in the northern parts of Virginia; do by these presents solemnly and mutually, in the presence of God and one another, *covenant* and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and *Obedience*.<sup>30</sup>

The early Puritans and other early colonists believed that they could emulate God's government as found in the examples of Biblical societies<sup>31</sup> through designing a government based on compact, or covenant, which required of each individual certain virtues and obligations.

An important part of the covenant obligations of colonial church fathers was ensuring good government through individual virtue. In keeping with inherited English traditions, they took it upon themselves to ensure the fulfillment of Isaiah's prophecy concerning the establishment of Israel in the latter-days, "And kings shall be thy nursing fathers, and their queens thy nursing mothers. . ." <sup>32</sup> As scholar James Hutson<sup>33</sup> notes, this passage was widely interpreted as a heavenly mandate for the state to support and establish religion.<sup>34</sup> This "nursing fathers" tradition "was embraced and incorporated in authoritative pronouncements of many of American's churches," appearing in a prominent bishop's *Apolog[y] . . . in defence of the Church of England* (1562), in the Presbyterians' Westminster Confession, and the New England Congregationalism's creed, the Cambridge Platform of 1648.<sup>35</sup> The passage of the Toleration Act of 1689 by Parliament, which officially denigrated governments from their "nursing father" roles to providing simple monetary support of state-religions, did not do much to dissuade government officials from their self-assumed roles of promoting general righteousness. New Jersey's governor was thus still praised by Anglican missionaries in 1704 for being a "true son or rather Nursing Father of her in America."<sup>36</sup> Tracts continued to circulate by university scholars in 1744 and sermons were continued to be preached like Edward Dorr's *The Duty of Civil Rulers, to be nursing Father to the Church of Christ* in 1765.<sup>37</sup> Thus even on the eve of independence, the "nursing fathers" tradition was firmly rooted in colonial America.

The colonists were resolute in their conviction that the "nursing fathers" role of governments was imperative to sustain the institutions which provided the "cement"<sup>38</sup> of civil, republican society. Because republican government was based on self-government, more was required, under covenant, of a people to sustain it. This "more" entailed individual virtue. Such necessary virtue was only the product of religion, "which has ever been found essential to the prosperity of civil government," as was proclaimed by the citizens of Surry County, Virginia in a petition to the General Assembly on December 1, 1784. The petition continued, "[W]here liberty

flourishes in its most luxuriant state . . . where much is left to [the people's] discretion, much to their caprice; the aid of religion will be more necessary and its influence more decisive, than in the Monarchies of Europe where the Governments have more energy and the subjects less liberty."<sup>39</sup> In expressing similar sentiments about the republican form of self-government the Constitution erected, John Adams admonished, "Our constitution is made only for a moral and religious people. It is wholly inadequate to the government of any other."<sup>40</sup> In sum, as Hutson notes, "Christianity's value in supporting republican government" was "so obvious" to Americans during the revolutionary era that newspapers and legislator's desks were filled with articles and petitions concerning its importance.<sup>41</sup>

Covenant governments and the duty of governments to act as "nursing fathers" to religion thus acted as twin traditions which both furthered and were sustained by the belief that only a righteous people could sustain a civic structure based on self-government. The colonists could not comprehend a society which deviated from such a clear prerequisite and were zealous to ensure it through the only means to which they were accustomed: state-supported religion.

### *B. The Necessary Freedom of Religious Thought*

In addition to promoting general virtue, Colonial America at the time of the founding was devoted in varying degrees to providing religious freedom. Despite the ugly religious persecutions later administered to those of their own and other faiths, the early Puritan settlements were initially established to allow a people to worship in peace, free from the persecutions of England and the corruptions of Holland. Likewise, William Penn and William Rogers each sought a place wherein not only they but others similarly persecuted might worship according to conscience.<sup>42</sup> Religious sects grew more numerous as the population of the colonies swelled, necessitating greater tolerance to accommodate the diversity. Parliament's Toleration Acts, although failing to dissuade the colonists of their "nursing father" and covenant obligations, fostered the sentiment that religious dissent and diversity should be tolerated.<sup>43</sup>

The colonists dogmatically adhered to the concept of religious toleration in many founding documents. Paradoxically, even in the same breath that religious toleration was granted it was also limited. The Virginia Declaration of Rights provided that men were entitled to the "free exercise" of religion, yet required "Christian forbearance."<sup>44</sup> Similarly, the Maryland 1776 constitution granted religious liberty to "all persons, professing the Christian religion" and required civil officers to take an oath verifying their loyalty to the state *and* their belief in Christianity.<sup>45</sup> The Pennsylvania constitution likewise provided that "no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will," while limiting its protection to those who believed in God.<sup>46</sup> Additionally, Pennsylvania required all office holders to pass a restrictive religious test.<sup>47</sup> These creative solutions provided no paradox to the colonists<sup>48</sup>: private but especially public citizens were permitted to believe what they willed, so long as it conformed to generally-accepted Christian beliefs. They could conceive of no other way to provide religious freedom and preserve religiosity as required of a nursing father.

Through equal-opportunity religious taxes, the colonists further sought to loosen state-religion ties. Once independence was declared and each state grappled with the disestablishment issue (especially those who had enthroned the Anglican Church, such as Maryland and the South), many states<sup>49</sup> diverted taxes previously earmarked for state establishments to the elected religious institutions of each citizen. These "general assessment" taxes allowed the state to answer its call to be a "nursing father" and, although compulsory, allowed each citizen to direct his monies to the sect of his choice.<sup>50</sup> Such taxes often permitted "Nothingarians" to designate their taxes for public education and provided a complete exemption for "Jews and Turks."<sup>51</sup> Thus the general assessment taxes provided another creative method wherein greater religious freedom was provided yet Christianity was still supported.

Such solutions reveal an unprecedented dedication to religious toleration and, to the extent the colonists

understood it, freedom.<sup>52</sup> This indiscriminate favoritism of protestant Christianity also allowed governments to accomplish their ever-important aim of developing a righteous citizenry under its covenant, “nursing father” obligations. Although the states were trusted to provide religious freedom *and* encourage general righteousness (even through state-established religions), the national government was not so readily trusted. The national solution to the providing both aims to a vast and diverse citizenry was not readily apparent to the nation. The novelty and difficulty of the problem facing the new republic produced deep ideological divisions concerning the methods and means of implementation. These divisions crystallized during ratification of the Constitution and finally culminated in a national solution which was simple in its brevity, yet complex in its creativity.

### III. A NATIONAL SOLUTION: THE FIRST AMENDMENT

#### A. *The Ratification Debates*

The events leading up to the First Amendment depict a polity divided along ideological lines for and against the Constitution wherein a healthy portion of the debate concerned religious freedom and the twin ideals of providing for a religious, virtuous people and protecting the rights of conscience. Surprisingly, although the Anti-federalists were ultimately the force which called for enumerating religious freedom in the varying bills of proposed amendments for Congressional consideration,<sup>53</sup> the bulk of Anti-federalists merely wanted to provide against the threat of an established national religion<sup>54</sup> because such would disrupt the *status quo*. In the years since independence, a unique balance had been struck wherein most sects enjoyed an unprecedented level of toleration, yet state and local governments were allowed to fulfill their “nursing fathers” roles, largely through indiscriminate religious support. Thus, while demonstrating a united front in ensuring religious tolerance and freedom of conscience by guarding against the establishment of a national religion,<sup>55</sup> most anti-federalists wanted to ensure that protestant religious ideals<sup>56</sup> would continue to influence the polity at large.<sup>57</sup> Telling is a letter “by David” published in the Massachusetts Gazette on March 7, 1788 which lauds the existence of certain religious elements of the national scheme under the Articles of Confederation: We have had and still have laws for a due observance of the Sabbath; and our annual fasts and thanksgivings are not only uniform proofs of the exercise of such a power; but are instances of the propriety of our conduct in making frequent and publick acknowledgments of our dependence upon the Deity. Never did any people possess a more ardent love of liberty than the people of this state; yet that very love of liberty has induced them to adopt a religious test, which requires all publick officers to be of some Christian, protestant persuasion, and to abjure all foreign authority. Thus religion secures our independence as a nation, and attaches the citizens to our own government.<sup>58</sup>

The Federalists, on the other hand, fought vigilantly for a Constitution which contained no religious protections but banned religious requirements. Although the Constitution made no provisions for that religion which produced morality, the Federalists did concede that moral and religious motives were usually sufficient to control the ill-conceived passions of local majorities.<sup>59</sup> To them, religion was best guarded—and a national religion guarded against<sup>60</sup>—by the same structural protections which provided against the effect of factions and abuse of power: popular sovereignty, bicameralism, and separation of powers. Through these structural protections, the degree of security “will depend on the number” of many competing sects in a large and diverse national system and “[a]mbition [is] made to counteract ambition.”<sup>61</sup> Thus in a vast federal system wherein the naked temptations of power dwarfed men’s capacity to abstain, the best safeguards were the checks and balances instituted into the constitution *itself* which enabled the government to control the governed and then obliged the government to control itself.<sup>62</sup> As Hamilton wrote, “If men were angels, no government would be necessary.”<sup>63</sup>

With regard to religious tests—the one religious issue on which the Constitution was not silent—the Federalists were adamant: because God alone is the “God of the conscience,” it would be a “blemish” on the

Constitution as submitted to the states were it to interfere with the “prerogatives of God” by requiring religious tests of public officers.<sup>64</sup> As the Constitution stood, each citizen, irregardless of “wealth, birth, or religious faith,” stood in equal footing to hold public office.<sup>65</sup>

Thus both contenders and supporters felt that the virtues religion produced were helpful if not necessary to sustain the newly proposed republican form of government, but differed in how religion should be protected and provided for. Each side also concurred that the rights of conscience should be protected yet differed on the means—the Federalist through a negative on religious tests, the anti-Federalists through a positive amendment proscribing a nationally established religion. The contest culminated in a remedy which maintained the ban on religious tests and yet incorporated the proposed positive amendment.

### *B. The Passage of the First Amendment*

The First Amendment’s genius lay in securing both religious ideals—it safeguarded the people against national religious establishments *and* allowed the general righteousness necessary to republican governments to be promoted—without contradictory results.

The First Amendment’s legislative history reveals that the First Congress indeed intended to provide against a national religion, answering to the fears of state convention delegates. As originally proposed by James Madison, the amendment prohibited “any national religion [to] be established.”<sup>66</sup> Madison felt compelled to include “national” because “the people feared one sect might obtain pre-eminence, or two combine together and establish a religion to which they would compel others to conform.”<sup>67</sup> And Madison was correct in his assertions – the fear that Congress would exercise its “necessary and proper” powers to establish a national religion was shared by many.<sup>68</sup> Yet strangely, Madison’s initial version was the only one to include the word “national” throughout the bill’s entire history. This phenomenon may be attributed to the eloquence of Elbridge Gerry, who reminded the Representatives that adopting the word “national” would confirm the fear of many—especially those in favor of state’s rights—that the Constitution established a *national* rather than a *federal* government consisting of several sovereign states.<sup>69</sup> Between the fear of a “national” religion and a “national” government, the majority determined the latter was the greater of the two evils, and for good reason: many within the sound of Gerry’s voice had attended the Constitutional Convention in Philadelphia,<sup>70</sup> and the debate over naming the new government either “national” or “federal”—which near brought about the ruin of the entire convention—was still fresh in their minds.<sup>71</sup> After Gerry’s pivotal reminder, all three successive attempts to re-enliven the amendment with any syntax hinting of “national” were struck down.<sup>72</sup> In contrast, the version passed out of the House *did* provide that “Congress shall make no law establishing Religion,”<sup>73</sup> and, throughout the amendment’s entire legislative history, some form or root of “establishment”—a word well understood to connote a state-church—was incorporated into the document. The First Congress thereby demonstrated that while any “national” reference was rejected because of the well-grounded fears which accompanied the word, they still intended to delimit Congressional power to “establish” a religion.<sup>74</sup> In addition, the Senate’s failed attempt to alter the amendment’s language to prohibit “establishing articles of faith or a mode of worship”<sup>75</sup> and a previous disregarded suggestion that the amendment merely prohibit Congress from making “no religious doctrine”<sup>76</sup> suggest that Congress felt anything short of a very specific prohibition against “establishments” would fail to protect the nation against the evils of an established religion. Thus, the First Congress clearly expressed their intent to ensure the continuance of religious tolerance enjoyed by the nation at large by specifically preempting any future effort by Congress to create a national religion.

Some feared that the language of the amendment in its varying stages might communicate an intent to “abolish religion altogether”<sup>77</sup> or “patronize those who professed no religion at all”<sup>78</sup>. Yet the amendment’s framers felt such dire consequences was provided against by protecting the “rights of conscience,”<sup>79</sup> which language was later expanded and further delineated by replacing it with the freedom of speech, assemblage, and the ability of citizens—whether acting as public official or private citizen—to “exercise” their religion freely.<sup>80</sup> This enabled Congress, through its duly elected members, to continue its “nursing father” role through indiscriminate

support of religion.<sup>81</sup> The First Congress demonstrated this interpretation through their actions: the day after approving the First Amendment in tandem with its other Bill of Rights siblings, Congress petitioned President Washington to proclaim a national day of thanksgiving in keeping with established tradition.<sup>82</sup> Congress also continued its normal practice of employing Congressional chaplains for morning prayers<sup>83</sup> and other administrations.<sup>84</sup> Furthermore, the non-denominational church services held each Sunday in the House chambers continued for over a quarter of a century.<sup>85</sup> Thus the passage of the First Amendment, as was hoped by anti-federalists, did little to alter the *status quo*: it ensured continued respect for and non-preferential treatment of Christian denominations by safeguarding against the establishment of a *national* religion.

In sum, the First Amendment's provision that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," along with the "conscience" protections, were designed to ensure that the twin aims—to promote public virtue *and* provide indiscriminate religious toleration—were accomplished. The First Congress sought to allow the first aim, public virtue, to be promoted through the conscience provisions and further determined to accomplish the second aim, toleration, through the prohibition on (national) establishments. Such intent would seem incongruent with Jefferson's *Danbury* "wall," yet as the next section will demonstrate, Jefferson's intended "wall" was not impenetrable, but perhaps was constructed with a few doors and windows.

#### IV. JEFFERSON'S EVOLVING RELIGION

The evolution of Jefferson's religious opinions is not often noted by scholars interpreting the *Danbury* letter, largely because its author was painfully private about his personal religious opinions. Jefferson's care to keep his personal beliefs private reflected his deeply-held sentiment that religion was a private and personal matter<sup>86</sup> and thereby enforced, not diminished, the depth of Jefferson's conviction. In communicating to a close friend, Jefferson confided, "I not only write nothing on religion, but rarely permit myself to speak on it, and never but in a reasonable society . . . [or in private] conversation."<sup>87</sup> The circumference of this "reasonable society" was amazingly limited<sup>88</sup>: although his personal religious practices included nightly religious devotions, not even Jefferson's closest family members knew of this or of his extensive personal translation and revision of the New Testament<sup>89</sup>—a painstaking task undertaken during his retirement years—until after his death.<sup>90</sup> The scant record produced by this practice of restraint has caused many scholars to rely on the political statements Jefferson made concerning church-state relationships during his early career, which more clearly elucidates his views on religious freedom than his latter-held beliefs, to interpret the *Danbury* letter. Yet this approach is inherently flawed due to the dramatic evolution of Jefferson's beliefs over time—leading to a like dramatic shift in the political-religious views which motivated him to write the letter.

This section will illustrate that Jefferson's shift in political-religious views translated into an interpretation of the First Amendment as communicated in the *Danbury* letter which largely coincided with the intent of the First Congress. In illustrating this theory, this section will first explain Jefferson's unique theology; discuss which of those beliefs changed in the early 1790s and the quality of that change; discuss how the changes affected his political-religious views and actions; and finally, discuss how the evolved political-religious views may be used to interpret the *Danbury* letter in the light Jefferson intended.

##### A. Basic tenants of Jefferson's theology

The scant record Jefferson bequeathed to scholars has led many to define Jefferson as a "confirmed deist"<sup>91</sup>. Yet Jefferson preferred to define himself as a "theist" (as opposed to atheism)<sup>92</sup>. This distinction may revolve around his a-deistic belief in the nature of God. Although many of Jefferson's beliefs evolved with time, a central tenant of Jefferson's theism was a belief in a Divine Creator who, unlike the traditional deist belief of a God who abandoned his creations, directed the affairs of man. He revealed this tenant in a letter to a political friend: "We are not in a world unguided by the laws and the power of a superior agent. Our efforts are in his hand, and directed by it; and he will give them their effect in his own time."<sup>93</sup> Although God's hand

“directed” man’s affairs, Jefferson maintained that this direction did not extend to all decisions. Jefferson firmly believed that man was responsible to employ the “oracle” of reason “endowed” to him by his benevolent Creator<sup>94</sup> to discern between right and wrong and any and all religious dogmas. While serving as the Ambassador to France, Jefferson urged the young Peter Carr, protégé of George Wythe and cousin to Jefferson’s close connections in Paris, to “[q]uestion with boldness even the existence of a god; because, if there be one, he must more approve the homage of reason, than that of blindfolded fear.”<sup>95</sup> Although this advice seems contradictory to Jefferson’s “theistic” belief in God, it illustrates a concept fundamental to Jefferson’s theology: each person must test all *a priori* religious assumptions against their God-given reason. The import of the subject matter required it,<sup>96</sup> and each individual was under an obligation to apply reason, “the only oracle given [ ] by heaven” to his religious beliefs, a responsibility for which each would be accountable “not for the rightness[,] but the uprightness” of the application.<sup>97</sup> Jefferson’s personal religious practices and reasoned arguments against basic Christian tenants demonstrated he had tested his own beliefs in a similar fashion. He in fact averred that his views on Christianity were the result of “a life of inquiry and reflection.”<sup>98</sup>

Beyond the concept of a monotheistic God, Jefferson’s theology aligned itself with the moral teachings of Christ found in the New Testament. Although raised an Anglican, Jefferson eschewed organized religion after a “religious crisis” during his teenage years.<sup>99</sup> Thereafter and up until the early 1790s, Jefferson looked to the teachings of Jesus of Nazareth as a “sublime morality” which outlined the “duties and charities” mankind owed one another.<sup>100</sup> This morality, which was “sufficient to preserve peace and order,”<sup>101</sup> in conjunction with the classical laws of Epictetus and Epicurus, provided a complete model for a peaceful and prosperous society.<sup>102</sup>

However, at least up until the early 1790s, Jefferson’s congruence with generally-held Christian beliefs ended here. Jefferson’s most benign contention with Christian theology concerned the impracticability and irrationality of miracles and the divinity of Christ. Because all religion should be understood through the “oracle” or reason, and miracles defied any such reason, Jefferson found their existence completely untenable. Consider the following advice given to Peter Carr concerning the sun’s stoppage as recorded in the Book of Joshua:

[T]hose facts in the bible which contradict the laws of nature, must be examined with more care, and under a variety of faces. Here you must recur to the pretensions of the writer to inspiration from god. Examine upon what evidence his pretensions are founded, and whether that evidence is so strong as that it’s fals[e]hood would be more improbable than a change of the laws of nature in the case he relates. For example in the book of Joshua we are told the sun stood still several hours . . . . Examine therefore candidly what evidence there is of his having been inspired. The pretension is entitled to your enquiry, because millions believe it. On the other hand, you are Astronomer enough to know how contrary it is to the law of nature that a body revolving on its axis, as the earth does, should have stopped, should not by that sudden stoppage have prostrated animals, trees, buildings, and should after a certain time have resumed it’s revolution, and that without a second general prostration. Is this arrest of the earth’s motion, as the evidence which affirms it, most within the law of probabilities?<sup>103</sup>

Jefferson further admonished the young Carr to similarly question the practicality of Christ’s immaculate conception and ascension, concluding with empathetic advice to console the young student: “do not be frightened.”<sup>104</sup> The divinity and passion of Christ were also disregarded by Jefferson; impracticabilities of this sort were only convincing in environments where “ignorance . . . abounds.”<sup>105</sup> Thus, in this regard, Jefferson strictly adhered to the tenants of generic deism.

### *B. Disillusionments with Christianity*

Jefferson’s most violent contention with the established religions of his day was generally what he called “the corruptions of Christianity.”<sup>106</sup> Although he believed in and practiced the teachings of Christ with devoutness,

he was deeply offended by the “corruptions” adopted by Christianity as a whole, accomplished by “pseudo-priests” who, throughout history from the time of Constantine, had changed the pure doctrines of the Old and New Testaments.<sup>107</sup> Jefferson “strictly” agreed<sup>108</sup> these “corruptions” advocated by the “popery”—pleasing God without forsaking vice, getting to heaven by penances, bodily mortifications, pilgrimages, saying masses, believing mysterious doctrines, burning heretics, and aggrandizing Priests—resulted in a separation of religion from morality and thus was antithetical to Jefferson’s view that morality should be the end and aim of all religion.<sup>109</sup> Through these corruptions, demonism paraded under the guise of Christianity, to which, in Jefferson’s mind, atheism was a preferable alternative.<sup>110</sup> In contrast to the degenerated state of Jefferson’s contemporary Christianity, he fully expected the “restoration of primitive Christianity” to be accomplished by “younger athletes to encounter and lop off the false branches which have been engrafted into it by mythologists of the middle and modern ages”<sup>111</sup> at some future date.<sup>112</sup>

Perhaps the doctrinal perversion Jefferson detested most was the concept of the Trinity. Indeed, he confided to a close friend in 1788 that his “difficulties” in reconciling the ideas of Unity and the Trinity had persisted “from a very early part of my life.”<sup>113</sup> Jefferson’s *Notes on Heresy* written to aid his cause in Virginia’s “desperate” disestablishment contests, reveal the depth of Jefferson’s inquiry and interest in the relationship between the Father and Son. Jefferson translated the ancient communications of early Christian fathers—Irenaeus, Constantine, Eusebius—and the Council of Antioch’s decree to conclude that, at least in antiquity, a “fundamental” doctrine essential to a “firm” testimony in Christianity was a belief in the separate and divine entities of the Father and Son.<sup>114</sup> In citing specifically to Irenaeus, Jefferson concludes that a belief in a consubstantial Trinity was contrary to early Christian thought: “Irenaeus says ‘who are the clean? those who go firmly, believing in the father & the son.’ [T]he fundamental doctrine or the firmness of the [Christia]n faith in this early age then was to believe in the *father & son*.”<sup>115</sup> According to Jefferson, it was not until the council at Nice affirmed “the direct contrary” that the doctrine of the Trinity gained any credence: “[The doctrine of the Trinity] is no where expressly declared by any of the earliest fathers, and was never affirmed or taught by the church before the council of Nice.”<sup>116</sup> Jefferson’s displeasure with this doctrinal departure from early Christian teachings on the Trinity rendered him completely unwilling, on principle, to acknowledge the doctrine in any form, even for the sake of child “sponsorship” (the equivalent of God-parenting) for a close friend.<sup>117</sup> The objection, grounded in extensive research and lived out in both his private and public life, demonstrate Jefferson’s own convictions: the Father and Son were separate entities, worthy of individual devotion and reverence.

Jefferson’s disillusionment with Christianity extended to the structure of the priesthood hierarchy and the lack of lay clergymen in Protestant sects, conditions inherited from the Mother Church. He was intimately aware of the New Testament’s many references to distinct priesthood offices—deacons, teachers, elders, bishops, preachers, apostles—and comments that Paul’s reference to himself as preacher, apostle, and teacher “prove that every synonym authorizes a different order of ecclesiastics,” a structure which was different from Jefferson’s contemporary Christianity.<sup>118</sup> Further, Jefferson relies on Titus 1:1 to conclude that bishops and elders appointed one another. In contradiction to this scriptural record, the bishops, “as tools of the crown,” failed in their duty to implement the correct governing structure.<sup>119</sup> In addition, Jefferson criticizes pope Higinus and his successors for stripping the title of “Clergy” from the lay people, a title which Jefferson says St. Peter granted “to all god’s people.”<sup>120</sup> As a principled man, Jefferson’s many doctrinal disputes with the Mother Church may have contributed to his life-long abstinence from officially joining any one Protestant religion<sup>121</sup> because no one sect eschewed each belief which was fundamental to Jefferson’s theology.

### *C. The Evolution of Jefferson’s Theology*

Jefferson’s writings demonstrate a marked evolution in his personal religious beliefs during his vice presidency tenure. While some Jeffersonian scholars claim the change in Jefferson’s beliefs amounted to a “conversion,”<sup>122</sup> others label the escalation of religious fervor a mere “development” of ideas refined over time.<sup>123</sup> Whatever the characterization, it is clear that Jefferson’s beliefs evolved dramatically during the early

1790s. The change occurred during a time when Jefferson was duty-bound as vice president to sit in disquietude from his chair in the Senate and witness the nation—through its duly-elected leaders—betray the “first principles” which patriots had died for in the Revolution.<sup>124</sup> A frustrated Jefferson found consolation and greater impetus to encourage religious participation as a means to cure the nation of its ills through visiting regularly with close friend Benjamin Rush and reading Joseph Priestley’s *An History of the Corruptions of Christianity*. Rush was prayerfully determined to convince Jefferson of the divinity of Christ,<sup>125</sup> yet it was Priestley’s essays which helped Jefferson to reconcile his ideological differences and redefine his paradigm of Christianity.<sup>126</sup> Reading Priestley’s book “amounted almost to a revelation”<sup>127</sup> for Jefferson, because it reinforced and proved with finality Jefferson’s theory that the “unintelligible” teachings of Christianity were perversions of Christ’s original message which were “foisted off on the faithful over the centuries by self-interested clerics.”<sup>128</sup> Christ’s true gospel, Priestley argued, consisted of a simple, “demystified” morality wherein the doctrines Jefferson found most troublesome—the Trinity, Atonement, and original sin—were mere creations by church fathers to pacify the intellectual pagan mind and subvert commoners with mysteries only the clergy could comprehend and interpret.<sup>129</sup> This, finally, was a version of Christianity—or a sincere belief in the teachings of Christ—consistent with Jefferson’s conception of true religion. Jefferson was convinced: “I am a *real Christian*”<sup>130</sup> he declared to a friend.

His actions demonstrated that this “revelation” went deeper than words. The period from 1790 to his death witnessed an increased frequency of church donations,<sup>131</sup> Sunday patronage,<sup>132</sup> and, as Fred Luebke has shown in his extensive analysis, from January 1800 to August 1801, Jefferson “wrote more letters with religious content than during his entire life prior to that time.”<sup>133</sup> In addition, two years into his presidency, Jefferson took occasion on two spring nights, though “overwhelmed with business” to lift the “unadulterated”<sup>134</sup> words of Christ from the New Testament into what he dubbed “[T]he Philosophy of Jesus.”<sup>135</sup> Of it, Jefferson commented, “it is a paradigma of [Christ’s] doctrines, made by cutting the texts out of the [Bible], and arranging them on the pages of a blank book, in a certain order of time or subject . . . . If I had time, I would add to my little book the Greek, Lat’n and French texts, in columns side by side.”<sup>136</sup> This is precisely what Jefferson did after his presidency. Although the earlier work has since been lost, the latter and more extensive work has been preserved as the “The Life and Morals of Jesus,” for which he extracted and translated Christ’s moral teachings (but none of the miraculous events) from the four languages—English, French, Latin, and Greek.<sup>137</sup> Jefferson considered his earlier work as “proof” of his Christian discipleship.<sup>138</sup> It can only be assumed that the latter work was a like demonstration of this mind set: because Jefferson’s understanding of Christianity had shifted, he could now claim fellowship with accepted modes of Christian worship.

#### *D. The Effect of Jefferson’s Evolving Beliefs on his Political Crusade for Religious Toleration*

The change in Jefferson’s behavior did not translate into a change in certain beliefs. In fact, Jefferson avowed himself during the public brouhaha created by his more public displays of devotion in the 1800s that his personal religious views had not changed<sup>139</sup>. (This profession was undoubtedly true: Priestley’s “revelation” redefined Jefferson’s view of Christianity, reinforcing Jefferson’s beliefs, not changing them<sup>140</sup>.) Yet while Jefferson’s core beliefs did not change, it is evident—and significant to this inquiry—that his views on religion’s proper role in the political process *did* change. Often, scholars have used Jefferson’s early political-religious opinions to explain and interpret the *Danbury* letter, yet Jefferson’s opinions on the subject underwent a significant evolution. To correctly understand the *Danbury* letter and its underlying motivations, it is important to determine which views changed and which did not.

##### *1. Jefferson held an unyielding, “principled” view that Government should not employ compulsory means to encourage religious virtue.*

Unyieldingly throughout his life, Jefferson was a strictly principled<sup>141</sup> man. His self-identified “scruples”<sup>142</sup> dictated his actions and opinions in both private and public spheres; in fact, divorcing his personally-held beliefs from public life was, to him, incomprehensible. Basic to all of his political religious opinions was

Jefferson's respect for the agency of man. He gained this respect by looking to the example set by the Father and Son: just as "God [H]imself will not save man against their wills"<sup>143</sup> so too "our Savior chose not to propagate [H]is religion by temporal pun[ishments] or civil incapacitation, if he had[,] it was in his almighty power. [B]ut he chose to enforce it by its influence on reason, thereby sh[o]wing to others how [they] should proceed"<sup>144</sup>. Jefferson concluded that men should emulate the actions of both Father and Son and seek to persuade voluntary compliance with religious morality instead of compel it by required donations to ecclesiastical establishments or mandatory adherence to certain "questionable"<sup>145</sup> religious dogmas (such as the Trinity) in order to hold public office. Thus, while Jefferson served as ambassador to France during the construction of the Constitution, his meticulous Account Book demonstrate that he followed the memorandum advice of Benjamin Franklin, his predecessor, for distributing public funds with one exception: Jefferson failed to contribute to the *queteuse* in chapel, demonstrating his abiding conviction that while he might contribute personal monies to religious institutions (and did<sup>146</sup>), no public monies should be used to support an established religion<sup>147</sup>. Thus, it is clear from his life that Jefferson truly was a "principled" man, and those principles, true to Jefferson's word, remained unyielding.

2. *Early marginalization due to Jefferson's unique personal theology may have motivated him to seek a level of general toleration which could encompass Jefferson's religious views and ensure his continued role in the public sector.*

Yet his views on the importance of religion in supporting republicanism did change. During the Revolutionary period, Jefferson was a religious enigma among his Founding Brothers; only Franklin (and Madison to a limited extent) shared his deist, or theist, beliefs. His unique personal theology was the source of political religious policies which, in most respects, were ideas whose time had not yet come. Contrary to the popular opinion that government should act as a "nursing father" to religious establishments in order to ensure the necessary morality which under-girds free societies, Jefferson believed that un-established religious influences, when allowed to percolate in society by means of "reason and persuasion," not force, would be "sufficient to establish peace and order"<sup>148</sup>. His crusade to ensure religious equality is evidenced by the multiple drafts for Virginia's Constitution he penned before George Mason's version was adopted on June 29, 1776. The first of the three drafts demonstrates Jefferson's high hopes for religious freedom: "All persons shall have full & free liberty of religious opinion, nor shall any be compelled to frequent or maintain any religious service or institution {but seditious behavior to be punble by civil magistrate accdg to the laws already made or hereafter to be made} [sic]"<sup>149</sup>. The final Virginia Constitution did not include any provision for religious freedom, yet Virginia's *Declaration of Rights*, also written by George Mason, demonstrate Jefferson's ideas had made a little headway. Article XVI states:

"THAT religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other"<sup>150</sup>.

Yet to Jefferson, this did not go far enough. Although it did admit to man's freedom of conscience in exercising his religious beliefs, it did not dispel the insidious oaths of office, disestablish the Anglican Church, nor protect against established religion's lesser evil—assessment tax. Having thus not reached entire fulfillment of his aims, Jefferson set out to accomplish by statute and again in an attempted revision<sup>151</sup> of the Virginia Constitution what he failed to accomplish in 1776. After Independence was declared and each state contemplated disenfranchising the "established" denominations of the old regime, it was in large part Jefferson's mammoth efforts which rendered Virginia the solitary state to neither establish a tax-supported religion or general assessment tax<sup>152</sup>. Yet rejecting the status-quo or any derivative version of state support for established religion was only the beginning for Jefferson. He began in 1776 to lobby support for his *Resolution for Disestablishing the Church of England and for Repealing Laws Interfering with Freedom of*

*Worship*<sup>153</sup> and bill for *Exempting Dissenters from Contributing to the Support of the Church*<sup>154</sup>. Yet Jefferson's ideas would not gain popular currency in Virginia (let alone the country) for another ten years. These bills served as direct forerunners to the *Virginia Statute for Religious Freedom*, which passed in 1786, under Jefferson's tutelage and the expertise of his protégé, Madison<sup>155</sup>. In addition to a general denouncement of government-compelled religious ideas and actions, the statute added to the *Virginia Declaration* prohibitions on assessment taxes and religious oaths of offices<sup>156</sup>.

The isolation which Jefferson experienced because of his atypical personal theology<sup>157</sup> provided impetus to protect and ensure Jefferson's future political livelihood. Indeed, his ideas on religious freedom were so different and his public devotion so lacking that many contemporaries were convinced Jefferson was an atheist<sup>158</sup>. Jefferson reacted violently to such "malignant perversion, misrepresentations and calumnies"<sup>159</sup>, causing him to guard his religious privacy even more closely. This violent reaction also provides an alternative explanation for Jefferson's motivation to ensure religious toleration. Although his crusade for religious freedom was unquestionably motivated by loftier "scruples," Jefferson may have been motivated in part by a desire to protect himself and people of like minds from being ostracized from a government and society which demanded conformance or at least nominal congruence with established Christian ideals. Specifically, the oaths of office required of many in civic service were repugnant to Jefferson because, as discussed above, it demanded acceptance of the Trinity. This he could not do. As a man of high ideals, Jefferson *could not* bend on this or any other principle demanding conformance to "illogical" Christian dogmas touted by the clergy, that "genus irritabile vatum"—that irritable tribe of priests<sup>160</sup>. If such a requirement persisted, Jefferson would be eliminated from further office and, if Jefferson possessed any sense of destiny for himself or the nation, he may have discerned it was not in his self interest—nor that of the country's—to be thus precluded from civic service. Hence, in order to avoid marginalization and ensure his continued participation in the political process, Jefferson fought during the revolutionary era not only to disenfranchise the Anglican Church, but to prohibit any religious tax or requirements for those seeking public office.

3. *Jefferson's modified view of later years that religion was actually necessary to a well-governed society affected his political-religious involvement, especially his motivations for writing the Danbury letter.*

Yet Jefferson's political-religious involvement—and therefore motivations for that involvement—evolved with his personal beliefs and changed conditions. Jefferson acted according to the necessity of the situation. Jefferson's political-religious actions Whereas he conceded during the revolutionary era that un-established religion *could be* "sufficient" to promote the morals necessary for a democratic republic, the years after Jefferson's "conversion" witnessed a marked change. He was finally able to join his founding brethren in affirming "the Christian religion brought to the original purity and simplicity of its benevolent institutor, is a religion of all others most friendly to liberty"<sup>161</sup> and further that religion was liberty's "best support"<sup>162</sup>. Not only was religion supportive and friendly to liberty, Jefferson conceded it was even *necessary*. In writing to a Presbyterian minister, Jefferson admitted, "Reading, reflection, and time have convinced me that the interests of society *require* the observation of those moral precepts . . . in which all religions agree"<sup>163</sup>. Much of this reflection was spent during Jefferson's uneasy tenure as vice president, wherein he became convinced that the evils that ailed society (and especially the Senate halls) could be remedied by a return to "social love", or the love of country and of one another that the Bible taught<sup>164</sup>. Therefore, although Jefferson differed from his contemporaries by limiting his endorsement—by refusing to promote one religion above another<sup>165</sup> and further promoting only those "pure" precepts—he nonetheless finally agreed that religion and the morality it fostered was *necessary*, not simply *sufficient*, to good government<sup>166</sup>.

Jefferson communicated his new views on religion's proper influence according to the degree that necessity required it. With regard to religious oaths of office, Jefferson was silent because his situation, and therefore motivation, no longer required defense. The Constitution had prohibited that religious tests be administered to Jefferson or any other public officeholder.

Yet Jefferson, with regard to religion's appropriate role in the public sector and its reciprocal influence on government, did feel a need to express his changed opinion. He communicated privately through personal letters and publicly through silent, symbolic actions. After his "conversion," Jefferson wrote profusely on the topic of religion to personal friends<sup>167</sup> yet wrote very little publicly, excepting the *Danbury* letter<sup>168</sup>, to promote religious freedom<sup>169</sup>. He strongly felt that religion should play a greater role in civic affairs than he tolerated in earlier years, and though rhetorically silent on the issue, Jefferson compensated by "speaking" about religious freedom through his actions. Most notably, "contrary to all former practice" Jefferson began to regularly attend Sunday services in the House of Representatives<sup>170</sup>. He also permitted members of the Marine Band, executive branch employees, to attend and perform at the same Sunday services. Moreover, Jefferson opened executive buildings to sects which needed to house congregations on Sunday<sup>171</sup>. Through this "communication," Jefferson demonstrated by example what he felt were proper relations between government and religion, but he also similarly communicated what he felt was improper. In contrast to his predecessor, Jefferson refused to issue days of "fasting and prayer"<sup>172</sup> because they constituted "religious exercises" which the national government was "interdicted" by the Constitution from enjoining<sup>173</sup>. All told, these "silent" actions communicated Jefferson's message with overwhelming clarity: the First Amendment was not violated by government's permissive support for and reciprocal influence of non-discriminatory religious activity; however, it was violated when the government undertook to promote a certain religious practice, such as fast days.

Jefferson's solitary public communication which concerned church-state relations at this time —the *Danbury* letter—addressed the only topic he felt could not be properly addressed without formal communication: a national religious establishment. Despite the First Amendment's "guaranty" that an "establishment of religion" would not be erected, Jefferson confided to Rush that if a people could violate the free speech and press provisions of the First Amendment in passing the Alien and Sedition Acts, the remaining securities of the First Amendment may also be in jeopardy<sup>174</sup>. Further, Jefferson evidenced to Rush his fear that certain sects were still vying to be christened the national religion: "[The Episcopalians and Congregationalists] believe that any portion of power confided to me will be exerted in opposition to their schemes," to which Jefferson added, "And they believe truly"<sup>175</sup>. The *Danbury* letter was Jefferson's attempt to deter and disappoint the contending sects. In requesting the attorney general to edit the letter, he revealed that its purpose was to condemn "the alliance between Church and State, under the authority of the Constitution," knowing full well (as was Jefferson's hope) that the letter might "give great offence to the New England clergy"<sup>176</sup>. Jefferson's decision to write to the Baptists, of all sects, was a tactical decision. He was aware of the long history of persecutions many Baptists received at the hands of other Protestants<sup>177</sup>. He was also aware of the power of righteous indignation. Thus Jefferson knew his *Danbury* sentiments, which largely coincided with the Baptist views<sup>178</sup>, would inflame the hearts of many Baptist enemies and thereby attain wide circulation. The political agenda was clear: the "wall" which separated church and state would prohibit any New England sect from establishing themselves as the national religion.

#### *E. Deciphering the Danbury letter through Jefferson's Symbolic Actions*

Jefferson wished always to be judged by his actions. He felt his theology could be best discerned by the life that he led, not the words which he spoke. He confided to a personal friend:

I have ever thought religion a concern purely between our God and our consciences, for which we were accountable to Him and not to the priests. I never told my own religion, nor scrutinized that of another. I never attempted to make a convert nor wished to change another's creed. I have ever judged of the religion of others by their lives, . . . *for it is in our lives, and not from our words, that our religion must be read.* By the same test the world must judge me<sup>179</sup>.

Just as Jefferson hoped his theology would be deciphered by his religious practices, so too he hoped his

political opinions would be deciphered by his political actions. In line with this desire, shortly after arriving to the White House in 1800, Jefferson communicated his disdain of anything resembling aristocracy by abolishing the elaborate Tuesday receptions at the Executive Mansion introduced by his predecessor (dubbed British-style “levees” by Jefferson), dispensing with excessive formalities at executive events and formal communications with Congress, and dressing in his country-brown homespun best at public functions<sup>180</sup>.

It is in this light that the *Danbury* letter should be interpreted. It was not 48 hours after writing that church and state must be separated by a “wall” that he began “continually” to attend Sunday services in the House of Representatives<sup>181</sup>. Jefferson’s dual and seemingly contradictory messages should be considered as two parts to his larger, overarching message. This message is best stated by Hutson in his comprehensive work, *Religion and the Founding of the American Republic*: “In [Jefferson’s] view, the government could not be a party to any attempt to impose upon the country a uniform religious exercise or observance; it could, on the other hand, support, as being in the public interest, voluntary, non-discriminatory religious activity”<sup>182</sup>.

Thus, in Jefferson’s view, the government’s proper relationship with religion can be understood through the interplay between the First Amendment’s “establishment” and “free exercise” clauses. Similar to the First Congress, Jefferson believed that government may not officially endorse nor compel the views or actions of any particular religious establishment, yet government must allow people to express their religious views in private or in public spheres<sup>183</sup>. This allowance embraced religious influences on government and even permitted government to lend resources in support of religion, so long as no one established religion was given preferential treatment.

It is clear from his “*Danbury* initiative”<sup>184</sup>—the *Danbury* letter and immediate “continual”, conspicuous church attendance—that Jefferson did in fact, on principle, mean what he both wrote and did: there must be a wall of separation preventing the state from officially adopting an established religion or dogma, as the *Danbury* Baptists and the First Congress feared, yet the wall should not be impregnable<sup>185</sup>. Government should be free to aid and promote religion on a non-discriminatory basis, and individuals should be free to express their religious sentiments in public spheres.

## V. CONCLUSION

Viewed alone, Jefferson's *Danbury* letter is not a complete nor accurate interpretation of the First Amendment's "establishment" and "free exercise" clauses. True to the twin obligations of governments to operate under covenant as "nursing fathers", the national government was permitted through the "free exercise" and "conscience" provisions of the amendment to heed its moral obligation to promote righteousness through indiscriminate support of religion. Such was necessary to sustain the national republican system. Although Jefferson's earlier public writings fail to fully embrace this idea, his later personal writings and public actions demonstrate his "conversion" to it. Instead, Jefferson and the First Congress agree that the "wall" more accurately describes the intent, in keeping with its desire to allow all sects "equal opportunity," to forever bar the establishment of a national religion.

- <sup>1</sup> CHARLES COLE, *THE SOCIAL IDEAS OF NORTHERN EVANGELISTS* 72 (1966).
- <sup>2</sup> JAMES H. HUTSON, *RELIGION AND THE FOUNDING OF THE AMERICAN REPUBLIC* 65 (1998).
- <sup>3</sup> LEO PFEFFER, *CHURCH, STATE AND FREEDOM* 139-49 (1996).
- <sup>4</sup> See generally HUTSON, *supra* note 3, at 67-71.
- <sup>5</sup> *Id.* at 68. Hutson notes that American Baptist “were prepared to give the state wide latitude in offering non-discriminatory, non-financial assistance to religion in general.” *Id.*
- <sup>6</sup> Letter from Connecticut Danbury Baptist Association to Thomas Jefferson (Oct. 7, 1801), *available at* <http://www.wallbuilders.com/resources/search/detail.php?ResourceID=82>.
- <sup>7</sup> *Id.*
- <sup>8</sup> *Id.*
- <sup>9</sup> See *infra* note 168.
- <sup>10</sup> *Id.*
- <sup>11</sup> Letter from Thomas Jefferson to Connecticut Danbury Baptist Association (Jan. 1, 1801), *reprinted in* 8 *THE WORKS OF THOMAS JEFFERSON* 8 (H.A. Washington ed., New York, Published by Order of Congress from the Original Manuscripts Deposited in the Department of State, 1884) (emphasis added).
- <sup>12</sup> *Reynolds v. U.S.*, (1878)
- <sup>13</sup> *Everson v. Board of Education* 330 U.S. 1, 18 (1947); see also *Engel v. Vitale*, 370 U.S. 421, 425 (1962)(holding that the “constitutional” wall of Separation between Church and State prohibited school prayers, even if participation is voluntary).
- <sup>14</sup> See *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004).
- <sup>15</sup> See *Locke v. Davey*, 124 S.Ct. 1307 (2004).
- <sup>16</sup> PETER SCHOTTEN & DENNIS STEVENS, *RELIGION, POLITICS & THE LAW* 25 (1996).
- <sup>17</sup> *Id.* at 24. In an Anti-federalist letter “by David” in the Massachusetts Gazette dated March 7, 1788, the writer marks that government-supported religion in the new country bore no novelty: “Every nation, I believe, has committed the care of religion to the government.” 4 *THE COMPLETE ANTI-FEDERALIST* 247 (Herbert J. Storing ed., 1981).
- <sup>18</sup> Stephen A. Marini, *Religion, Politics, and Ratification*, in *RELIGION IN A REVOLUTIONARY AGE* 190 (Ronald Hoffman and Peter J. Albert, eds., 1994).
- <sup>19</sup> This data is accurate up until 1760. Jon Butler, *Coercion, Miracle, Reason: Rethinking the American Religious Experience in the Revolutionary Age*, in *id.* at 5.
- <sup>20</sup> Complete disestablishment was a long and complex process for the nation. Established religions, as noted above, were not entirely extinct in America until 1833. See *supra* note 3 and accompanying text.
- <sup>21</sup> Marini, *supra* note 18, at 193.
- <sup>22</sup> *Id.* at 194.
- <sup>23</sup> Butler, *supra* note 19, at 5.
- <sup>24</sup> HUTSON, *supra* note 2, at 53.
- <sup>25</sup> Lynn D. Wardle, *The Constitution as Covenant*, in *Readings on the Origins of the Constitution of the United States of America* ch. 11, at 5 (2003) (unpublished compilation on file with the author).
- <sup>26</sup> *Id.* at 5
- <sup>27</sup> *Id.*
- <sup>28</sup> *Id.* at 4-5. In establishing a “due form of Government both civil and ecclesiastical,” John Winthrop preached to his seafaring congregation in route to New England that “when God gives a special commission, he looks to have it strictly observed in every article . . . Thus stands the cause between God and us: we are entered into covenant with Him for this work.” EDWIN S. GAUSTAD, *PROCLAIMING LIBERTY THROUGHOUT ALL THE LAND: A HISTORY OF CHURCH AND STATE IN AMERICA* 9 (2003).
- <sup>29</sup> *Id.* at 6.
- <sup>30</sup> *MAYFLOWER COMPACT*, 1620 (emphasis added).
- <sup>31</sup> Alice Baldwin, *The New England Clergy and the American Revolution*, as excerpted in *Origins*, *supra* note 25, at chpt. 11, p. 1.
- <sup>32</sup> *Isaiah* 49: 23 (King James).
- <sup>33</sup> Hutson was commissioned to prepare the companion treatise for the touring Library of Congress exhibition, *Religion and the Founding of the American Republic*, acts as curator for the exhibition, is the Chief of the Library’s Manuscript Division, and is a distinguished scholar of early American history.
- <sup>34</sup> HUTSON, *supra* note 2, at 61
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.* Hutson notes that Elisha Williams, former president of Yale, claimed, “the Civil Authority of a State are obliged to take Care for the Support of Religion, or in other words, of Schools and the Gospel Ministry, in order to their approving themselves Nursing Fathers (as, I suppose, every Body will own, and therefore I shall not spend any time proving it).” *Id.*
- <sup>38</sup> *Id.* This quote is taken from the petition of the Surry County Virginians, see *infra*, note 39, and accompanying text.

- <sup>39</sup> *Id.* at 63-64.
- <sup>40</sup> JOHN R. HOWE, JR., *THE CHANGING POLITICAL THOUGHT OF JOHN ADAMS* 195 (1966).
- <sup>41</sup> HUTSON, *supra* note 2, at 63.
- <sup>42</sup> See GAUSTAUD, *PROCLAIM LIBERTY*, *supra* note 25, at 7-9.
- <sup>43</sup> Butler reports that the established religions of the colonies accommodated and tolerated religious dissent “all too well,” citing Anglican southerners’ complaints that the colonies’ Anglican denominations lacked a presiding bishop and that colonial establishment laws gave “too little power to Anglican commissaries and too much to parish ministers and vestries.” Butler, *supra* note 19, at 6.
- <sup>44</sup> VIRGINIA DECLARATION OF RIGHTS (1776).
- <sup>45</sup> Edwin S. Gaustad, *Religious Tests, Constitutions, and “Christian Nation”*, in *RELIGION IN A REVOLUTIONARY ERA*, *supra* note 18, at 218.
- <sup>46</sup> *Id.* at 220.
- <sup>47</sup> *Id.*
- <sup>48</sup> See *infra* note 52.
- <sup>49</sup> These states included Massachusetts, Connecticut, New Hampshire, Maryland, and Georgia. An attempt to pass such a tax was aborted in Virginia, in large part due to the efforts of Jefferson and Madison. HUTSON, *supra* note 3, at 66.
- <sup>50</sup> *Id.* at 65.
- <sup>51</sup> *Id.*
- <sup>52</sup> Herbert J. Storing, editor of *The Complete Anti-Federalists*, maintained that at least the Anti-Federalists saw no contradiction in supporting both liberty of conscience and “the public support of the religious, and generally Protestant, community as the basis of public and private morality,” as long as such support was indiscriminate. Limiting religious freedom to those who professed a belief in God was justified on principle that only a virtuous, God-faring people could maintain a free government. Storing, *supra* note 17, vol. 1 at 23n. See also Hutson’s note that non-preferential treatment of Christian denominations was a “revolutionary imperative.” HUTSON, *supra* note 3, at 79.
- <sup>53</sup> A minority of Massachusetts, Pennsylvania, and Maryland’s ratifying delegates, in addition to New Hampshire, New York, North Carolina, Rhode Island, and Virginia’s ratification reports to Congress included provisions for religious liberty in their proposed amendments to the federal constitution. See *THE COMPLETE BILL OF RIGHTS: THE DRAFTS, DEBATES, SOURCES, AND ORIGINS*, at 11-13 (Neil H. Cogan ed., Oxford University Press 1997). Significantly, New Hampshire’s twelfth amendment which bears a significant resemblance to the First Amendment as now enacted. It provided, “Congress shall make no Laws touching Religion, or to infringe the rights of Conscience.” *Id.* at 12.
- <sup>54</sup> See MARYLAND’S TWELFTH MINORITY PROPOSED AMENDMENT (June 21, 1788), *reprinted in* Cogan, *supra* note 53, at 12 (providing “that there be no national religion established by law, but that all persons be equally entitled to protection in their religious liberty”); Mr. Tredwell, Speech Delivered to the New York Ratifying Convention (July 2, 1788), *reprinted in id.* at 62.
- <sup>55</sup> 1 Storing, *supra* note 17, at 22n. See also Essay V of “An Old Whig” in Pennsylvania who posited that the natural human desire for uniformity in religion must be guarded against by specific provisions which guarded “the rights of conscience.” *Id.*, vol. 3 at 34.
- <sup>56</sup> Protestant dogmas were considered by the anti-federalists, who were largely Presbyterians, Congregationalists, and Baptists, Marini, *supra* note 18, at 192, as the only appropriate source of public virtues. To illustrate, many anti-federalists opposed the ban on religious tests for public officeholders because, without such tests, the “great power[s]” of public office might fall to “a Papist, or an Infidel”. Storing, *supra* note 17, vol. 2 at 44.
- <sup>57</sup> See generally *Second Essay of Philadelphiensis*, PHILADELPHIA INDEP. GAZETTEER (between November 1787-April 1788), *reprinted in* 3 Storing, *supra* note 17, at 106.
- <sup>58</sup> 4 Storing, *supra* note 17, at 247-48.
- <sup>59</sup> See *Id.* No. 10, at 58 (James Madison).
- <sup>60</sup> See Oliver Wolcott, Speech Delivered to the Connecticut Ratifying convention (Jan. 9, 1788), *reprinted in* Cogan, *supra* note 53, at 62.
- <sup>61</sup> See THE FEDERALIST No. 51, at 337, 339-340 (Alexander Hamilton) (Edward Mead Earle ed., 1937).
- <sup>62</sup> See *Id.* No. 51, at 337 (Alexander Hamilton).
- <sup>63</sup> *Id.*
- <sup>64</sup> Mr. Wilson, Speech Delivered to the Pennsylvania Ratifying Convention( OCTOBER 28, 1787), *reprinted in* 2 ELLIOT’S DEBATES ON THE FEDERAL CONSTITUTION 436 (Jonathan Elliot ed., 2nd ed. 1996) (1891).
- <sup>65</sup> THE FEDERALIST No. 57, at 371 (Alexander Hamilton or James Madison), *supra* note 61.
- <sup>66</sup> 1 CONG. REG. 427 (June 8, 1789), *reprinted in* Cogan, *supra* note 53, at 1.
- <sup>67</sup> 2 CONG. REG. 196 (Aug. 15, 1789), *reprinted in* Cogan, *supra* note 53, at 2.
- <sup>68</sup> See *infra* note 174 and accompanying text.
- <sup>69</sup> 2 CONG. REG. 197 (Aug. 15, 1789), *reprinted in* Cogan, *supra* note 53, at 61.
- <sup>70</sup> All told, 17 of the 56 delegates to the Constitutional Convention served as members of the First Congress. In the House, Elbridge Gerry, Roger Sherman, George Clymer, Thomas Fitzsimons, Daniel Carroll, James Madison, and Hugh Williamson had been elected to serve as representatives. The Senate, with nine delegates, had an even stronger showing: John Langdon, Caleb Strong,

- William Samuel Johnson, Oliver Ellsworth, William Paterson, Robert Morris, George Read, William Few, and Pierce Butler served as senators for the First Congress.
- <sup>71</sup> The designation of the new republican system was a point of heated dispute at several stages of the Constitutional Convention, and threatened to be near fatal to the design of the convention as early as the fourth day of the convention's progress. *See* 5 Elliot, *supra* note 64, at 132-33, 191, 193, 198, 206, 212, 214, 220, 256.
- <sup>72</sup> The first failed motion proposed that the amendment read, "Congress shall make no law establishing One Religious Sect or Society in preference to others," the second, "Congress shall not make any law infringing the rights of conscience, or establishing any Religious Sect or Society," and the third, "Congress shall make no law establishing any particular denomination of religion in preference to another or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed." Cogan, *supra* note 53, at 3-4.
- <sup>73</sup> *Id.* at 3.
- <sup>74</sup> Madison continued to believe that such was the intent of the First Congress. In "Detached Memoranda," his unpublished political reminiscence composed after 1816, Madison recorded "the constitution of the U.S. forbids everything like an establishment of a national religion." HUTSON, *supra* note 3, at 78.
- <sup>75</sup> Cogan, *supra* note 53, at 6.
- <sup>76</sup> *Id.* at 59.
- <sup>77</sup> *Id.* at 59.
- <sup>78</sup> *Id.* at 60.
- <sup>79</sup> The motion to replace the "rights of conscience" language originally in the amendment with the free speech and assemblage language was proposed by Rep. Ames and adopted by the House of Representatives on August 20, 1789. 2 CONG. REG. 242 (Aug. 20, 1789), *reprinted in id.* at 2.
- <sup>80</sup> This expansion was enacted by the Senate. *Id.* at 5.
- <sup>81</sup> In keeping with promoting the necessary virtues of republican government, the first acts of the Congress included printing an edition of the Bible, appointing chaplains for civilian and military duty, criminalizing non-Christian activity in the armed forces, and granting land to promote Christianity under the Northwest Ordinance. HUTSON, *supra* note 3, at 58.
- <sup>82</sup> The petition that the president "recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the any signal favors of Almighty God," was made by Elias Boudinot, president of the First Congress. *Id.* at 79-80.
- <sup>83</sup> *Id.* at 79.
- <sup>84</sup> Senate chaplain Bishop Thomas Clagget wrote to a friend that he delivered "a course of Sermons" on Sundays in the Capitol at the services held in the House of Representatives chambers, *infra* note 85 and accompanying text. *Id.* at 84.
- <sup>85</sup> Sunday services commenced as soon as the government moved to Washington, D.C. *Id.*
- <sup>86</sup> CHARLES B. SANFORD, *THE RELIGIOUS LIFE OF THOMAS JEFFERSON* 12 (1995).
- <sup>87</sup> Letter from Thomas Jefferson to Charles Clay (Jan. 29, 1815), *quoted in id.*; 2 *THE PAPERS OF THOMAS JEFFERSON* 6 (Julian P. Boyd et al. eds, 2nd. ed., 1969).
- <sup>88</sup> Jefferson survived his wife and all but two children, Martha and Lucy, who both left Monticello when they married. Thus, excluding his servants, Jefferson lived alone at Monticello for most of his life. *See* ANDREW M. ALLISON et al, *THE REAL THOMAS JEFFERSON* 107-110 (2nd ed. 1981).
- <sup>89</sup> This compilation was Jefferson's attempt to strain from the Biblical texts the "genuine" sayings of Jesus. HUTSON, *supra* note 2, at 83.
- <sup>90</sup> Of this work, his grandson, Thomas Jefferson Randolph, noted that "his codification of the morals of Jesus was not known to his family before his death, and they learned from a letter addressed to a friend that he was in the habit of reading nightly from it before going to bed." Letter from Thomas Jefferson Randolph to Henry S. Randall, *in* ALLISON, *supra* note 88, at 300. This work was a much-expanded version of an earlier version which "consumed" a mere two nights during his presidency. SANFORD, *supra* note 86, at 103. This Jefferson called "The Philosophy of Jesus" and is the version scholars with which scholars are most familiar. Letter from Thomas Jefferson to Charles Thomson, *reprinted in* 14 *THE WRITINGS OF THOMAS JEFFERSON* 385 (Albert E. Bergh, ed., 1904). *See infra* notes 136-139 and accompanying text.
- <sup>91</sup> HUTSON, *supra* note 2, at 73; *see* Sanford, *supra* note 86, at 92.
- <sup>92</sup> SANFORD, *supra* note 86 at 92.
- <sup>93</sup> Letter from Thomas Jefferson to David Barrow, (May 1 1814), *reprinted in* 14 Bergh, *supra* note 90, at 297.
- <sup>94</sup> Letter from Thomas Jefferson to Peter Carr, 10 Aug. 1787, *reprinted in* 12 Boyd, *supra* note 87, at 15.
- <sup>95</sup> *Id.* Jefferson maintained this logical, reasoned approach to religion until his death. In December of 1823 he writes to William Carver, "For the use of this reason, however, every one is responsible to the God who has planted it in his breast, as a light for his guidance, and that, by which alone he will be judged." Letter from Thomas Jefferson to William Carver (Dec. 4, 1823), *reprinted in* 12 *THE WRITINGS OF THOMAS JEFFERSON* 327 (Paul Leicester Ford, ed., 1892-1899).
- <sup>96</sup> *Id.* In his letter to the young Carver, Jefferson writes, "[Religion] is too important" to merit anything but the most exacting study. *Id.*
- <sup>97</sup> *Id.*
- <sup>98</sup> Letter from Thomas Jefferson to Dr. Benjamin Rush (Apr. 21 1803), *reprinted in* 10 Bergh, *supra* note 90, at 379-380.

- <sup>99</sup> Matthew S. Holland, *Thomas Jefferson: Religious Beliefs and Political Doctrines*, in LECTURES *supra* note **Error! Bookmark not defined.**, at 89.
- <sup>100</sup> *Id.* at 80.
- <sup>101</sup> THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA (Feb. 27, 1787), *reprinted in* 8 Washington, *supra* note 11, at 249.
- <sup>102</sup> Holland, *supra* note 99, at 89.
- <sup>103</sup> 12 Boyd, *supra* note 87, at 16.
- <sup>104</sup> *Id.*
- <sup>105</sup> Holland, *supra* note 99, at 89.
- <sup>106</sup> Letter from Thomas Jefferson to Dr. Benjamin Rush (Apr. 21 1803), *reprinted in* 10 Bergh, *supra* note 90, at 380, 381.
- <sup>107</sup> *Id.*
- <sup>108</sup> Letter from Thomas Jefferson to Richard Price (Jan. 8 1789), *reprinted in* 14 Boyd, *supra* note 87, at 420.
- <sup>109</sup> Letter from Richard Price to Thomas Jefferson (Oct. 1, 1788), *id.* at 39.
- <sup>110</sup> Letter from Thomas Jefferson to Richard Price, *supra* note 108. In response to a minister's request to comment on certain religious tracts, Jefferson lamented, "These formulas have been the bane and ruin of the Christian church, its own fatal invention which, thro' so many ages, made of Christendom a slaughter house, and at this day divides it into Casts of inextinguishable hatred to one another." Holland, *Lectures*, *supra* note 99, at 89.
- <sup>111</sup> Letter from Thomas Jefferson to Dr. Benjamin Waterhouse (July 19, 1822), *reprinted in* 15 Bergh, *supra* note 90, at 391..
- <sup>112</sup> Consequentially, Jefferson believed that restoration of "original" purity to Christ's teachings would happen "too late for me to witness it" in 1820. Letter from Thomas Jefferson to Jared Sparks (Nov. 4, 1820), *reprinted in id.* at 288.
- <sup>113</sup> Letter from Thomas Jefferson to J.P.P. Derieux (July 25, 1788), *reprinted in* 1 Boyd, *supra* note 87, at 418.
- <sup>114</sup> Thomas Jefferson, Notes on Heresy, *reprinted in* 1 Boyd, *supra* note 87, at 553 (emphasis in original).
- <sup>115</sup> *Id.*
- <sup>116</sup> *Id.*
- <sup>117</sup> Letter from Thomas Jefferson to J.P.P. Derieux, *supra* note 113, at 418.
- <sup>118</sup> Thomas Jefferson, Notes on Episcopacy (1776), *reprinted in* 1 Boyd, *supra* note 87, at 551.
- <sup>119</sup> *Id.* at 552.
- <sup>120</sup> *Id.*
- <sup>121</sup> *See infra* notes 166, 170.
- <sup>122</sup> HUTSON, *supra* note 2, at 83.
- <sup>123</sup> SANFORD, *supra* note 86, at 7.
- <sup>124</sup> Holland, *supra* note 99, at 90.
- <sup>125</sup> *Id.*
- <sup>126</sup> *Id.*
- <sup>127</sup> Paul K. Conkin, *Priestley and Jefferson: Unitarianism as a Religion for a New Revolutionary Age*, in RELIGION IN A REVOLUTIONARY AGE, *supra* note 18, at 301.
- <sup>128</sup> HUTSON, *supra* note 3, at 83.
- <sup>129</sup> Holland, *supra* note 99, at 90. Jefferson wrote to Elbridge Gerry on the topic, "The mild and simple principles of Christian philosophy would produce too much calm, too much regularity of good, to extract from it's disciples a support of a numerous priesthood, were they not to sophisticate it, ramify it, split it into hairs, and twist it's texts till they cover the divine morality of it's author with mysteries, and require a priesthood to explain them." Letter from Thomas Jefferson to Elbridge Gerry, *supra* note 133, at 243.
- <sup>130</sup> Letter from Thomas Jefferson to Charles Thomson (Jan. 9 1816), *reprinted in* 14 Bergh, *supra* note 90, at 385 (emphasis in original).
- <sup>131</sup> *See* HUTSON, *supra* note 3, at 94-95. Most of Jefferson's recorded donations occurred after 1800 and never favored one particular sect above another. *Id.*
- <sup>132</sup> HUTSON, *supra* note 3, at 84, 95; *see infra* notes 166, 170.
- <sup>133</sup> C. LUEBKE, THE ORGINS OF THOMAS JEFFERSON'S ANTI-CLERICALISM, 32 Church History no. 3, p.352 (1963) *quoted in* Holland, *supra* note 99, at 92.
- <sup>134</sup> Holland, *supra* note 99, at 92.
- <sup>135</sup> ALLISON, *supra* note 88, at 299.
- <sup>136</sup> Letter from Thomas Jefferson to Charles Thomson, *supra* note 90 at 385-386.
- <sup>137</sup> SANFORD, *supra* note 86, at 103. Although the first version has indeed been lost but for a few pages preserved in the University of Virginia library, Jefferson's grandson provided a description of the work and a list of its contents. *Id.* The two works are compared, side by side, in an appendix of Sanford's work and are also produced in full in an appendix to Bergh's volume set. 20 Bergh, *supra* note 90, at apx., 7-50.
- <sup>138</sup> Letter from Thomas Jefferson to Charles Thompson, *supra* note 90, at 385.
- <sup>139</sup> *Id.* at 14.
- <sup>140</sup> *See* Conkin, *supra* note 127, at 301.

- <sup>141</sup> In writing to Elbridge Gerry shortly after his initial inauguration as president, Jefferson stated, “It will be a great blessing to our country if we can once more restore harmony and social love among its citizens. I confess, as to myself, it is almost the first object of my heart, and one to which I would sacrifice everything but principle.” Letter from Thomas Jefferson to Elbridge Gerry (Mar. 29, 1801), *reprinted in* 9 Ford, *supra* note 87, at 242.
- <sup>142</sup> Letter from Thomas Jefferson to J.P.P. Derieux, *supra* note 113, at 418.
- <sup>143</sup> Thomas Jefferson, Notes on Locke and Shaftesbury, Locke’s works 2d. vol, *reprinted in* 1 Boyd, *supra* note 87, at 546.
- <sup>144</sup> *Id.* at 544. Jefferson also stated in his Virginia Statute for Religious Freedom that the “Lord both of body and mind . . . chose not to propagate [religion] by coercions on either.” 12 STATUTES AT LARGE OF VIRGINIA 84-86 (W.W. Hening, ed., 1823).
- <sup>145</sup> Jefferson, Notes on Locke, *supra* note 143.
- <sup>146</sup> See *supra* note 131 and accompanying text.
- <sup>147</sup> 16 Boyd, *supra* note 87, at 358n.
- <sup>148</sup> JEFFERSON, NOTES, *supra* note 101. Jefferson’s belief in permitting man to follow his conscience in religious matters translated into a level of toleration which also set him apart. During a time when most people were threatened by non-Christian ideas, he candidly stated, “it does me no injury for my neighbour [sic] to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.” *Id.*
- <sup>149</sup> Thomas Jefferson, First Draft of the Virginia Constitution by Jefferson (Before June 13, 1776) *reprinted in* 1 Boyd, *supra* note 87, at 344.
- <sup>150</sup> VIRGINIA DECLARATION OF RIGHTS Freedom, *supra* note 44.
- <sup>151</sup> Thomas Jefferson, Draft of a Constitution for Virginia, 1783, *reprinted in* 6 Boyd, *supra* note 87, at 298. Jefferson’s attempted revision provided, “The General assembly shall not have power to infringe this constitution; to abridge the civil rights of any person on account of his religious belief; to restrain him from professing and supporting that belief, or to compel him to contributions, other than those he shall himself have stipulated, for the support of that or any other. . .” *Id.*
- <sup>152</sup> HUTSON, *supra* note 3, at 66.
- <sup>153</sup> Thomas Jefferson, Rough Draft of Jefferson’s Resolutions for Disestablishing the Church of England and for Repealing Laws Interfering with Freedom of Worship (Before Nov. 19 1776), *reprinted in* 1 Boyd 87, *supra* note, at 530.
- <sup>154</sup> Thomas Jefferson, Draft of Bill for Exempting Dissenters from Contributing to the Support of the Church, 30 November 1776, *reprinted in* 1 Boyd, *supra* note 87, at 532.
- <sup>155</sup> The Virginia Statute for Religious Freedom was written by Thomas Jefferson in 1779 and considered by him as one of his greatest life achievements, as evidenced by his request to include that he authored it along with the Declaration of Independence on his gravestone. SANFORD, *supra* note 86, at 172.
- <sup>156</sup> See generally VIRGINIA STATUTE FOR RELIGIOUS Freedom, *supra* note 144.
- <sup>157</sup> In a study done on the sources referenced in political tracts and general writings of the Founding, John Eidsmoe comments, “The most cited thinkers were not deists and philosophers, but legal and political thinkers who were also Christians.” JOHN EIDSMOE, CHRISTIANITY OF THE CONSTITUTION 51-53 *quoted in* L. Tom Perry, Address to Brigham Young University Assembly (Sep. 1, 1987), *reprinted in* Origins, *supra* note 25, at ch. 26, p. 73.
- <sup>158</sup> SANFORD, *supra* note 86, at 83.
- <sup>159</sup> Letter from Thomas Jefferson to Benjamin Rush (Apr. 21, 1803), *quoted in* SANFORD, *supra* note 86, at 13.
- <sup>160</sup> Letter from Thomas Jefferson to Dr. Benjamin Rush, 9 Ford, *supra* note 87, at 148; *also quoted in* EDWIN S. GAUSTAD, SWORN ON THE ALTAR OF GOD: A RELIGIOUS BIOGRAPHY OF THOMAS JEFFERSON 185 (1996).
- <sup>161</sup> *Id.* at 135.
- <sup>162</sup> ALLSION, *supra* note 88, at 605.
- <sup>163</sup> GAUSTAD, SWORN, *supra* note 160, at 135 (emphasis added).
- <sup>164</sup> Letter from Thomas Jefferson to Elbridge Gerry, *supra* note 141.
- <sup>165</sup> GAUSTAD, SWORN, *supra* note 160, at 185.
- <sup>166</sup> Illustrative is an anecdote recorded by the Reverend Allen concerning his encounter with President Jefferson one Sunday morning. According to Allen, after a friend told Jefferson that it would be futile to attend church because he “d[id] not believe a word of it,” Jefferson responded that “No nation has ever yet existed or been governed without religion. Nor can be. The Christian religion is the best religion that has been given to man and I as chief Magistrate of this nation am bound to give it the sanction of my example. Good morning Sir.” HUTSON, *supra* note 3, at 96. Jefferson also felt that religion, along with justice, constituted “pillars” of society which were being “prostituted” by the American public in 1801. Letter from Thomas Jefferson to Elbridge Gerry (Mar. 29, 1801) *reprinted in*, 9 Ford, *supra* note 87, at 241.
- <sup>167</sup> See *infra* note 127, which quotes Luebke’s conclusion that Jefferson wrote more on the topic of religion through personal letters during the first 18 months of his presidency than all of his writings—combined—up to that time, and notes 153-158, which quotes several of the letters recorded in Luebke’s study.
- <sup>168</sup> Though in epistle format, the *Danbury* letter was designed as a public address which happened to be written to one of the many petitioning religious organizations. Jefferson had full knowledge that it would be publicized and even sent it to the Attorney General for proofreading before sending it to the Baptists. Letter from Thomas Jefferson to Attorney General Levi Lincoln, Jan. 1, 1802, *reprinted in* 12 Ford, *supra* note 93, at 346. After its wide publication, Jefferson responded in private letters to several individuals who thanked him for writing the letter. For an example of one such letter, see *supra*, note 133. Yet the *Danbury* letter

- remains unique as one of the few public writings on religious freedom during the years of his presidency. SANFORD, *supra* note 86, at 32-33. Jefferson confirmed his aversion to publicizing his views on religion in responding to a request, "I write nothing for publication, and last of all things should it be on the subject of religion." 12 Ford, *supra* note 93, at 42.
- <sup>169</sup> LUEBKE *in* Holland, *supra* note 133, at 92.
- <sup>170</sup> Letter from Mannaseh Cutler to Joseph Torrey (Jan. 4, 1802), *reprinted in* LIFE OF CUTLER, 2, 66, *quoted in* HUTSON, *supra* note 3, at 93. As Hutson notes, "Cutler meant that Jefferson attended church on January 3, 1802, for the first time *as president*." It is clear that Jefferson attended church in the House before as vice president, yet it was not until January 3rd that Jefferson began attending Church "continually" until his term as president expired. *Id.* at 119 n.71 (emphasis in original).
- <sup>171</sup> HUTSON, *supra* note 3, at 89.
- <sup>172</sup> This was the purpose of the *Danbury* letter, which Jefferson hoped would "sow[ ] . . . truths & principles among the people, which might germinate and become rooted among their political tenets." Letter from Thomas Jefferson to Attorney General Levi Lincoln, *supra* note 168.
- <sup>173</sup> Letter from Thomas Jefferson to Reverend Samuel Miller (Jan. 23 1808), *reprinted in* 11 Ford, *supra* note 93, at 7.
- <sup>174</sup> GAUSTAD, SWORN, *supra* note 160, at 185.
- <sup>175</sup> *Id.* at 185.
- <sup>176</sup> Letter from Thomas Jefferson to Attorney General Levi Lincoln, *supra* note
- <sup>177</sup> See *infra*, note 4.
- <sup>178</sup> See *infra*, note 5.
- <sup>179</sup> ALLISON, *supra* note 89, at 602 (emphasis added).
- <sup>180</sup> ALLISON, *supra* note 89, at 220-221. Allison further notes that one Senator from New Hampshire "thought Jefferson was a servant" until he was properly introduced. *Id.* quoting Letter from William Plumer to Jeremiah Smith (9 Dec. 1802).
- <sup>181</sup> See *supra* note 170.
- <sup>182</sup> HUTSON, *supra* note 3, at 93.
- <sup>183</sup> David Barton, scholar of early American history and president of Wallbuilders, a research institute which specializes in the Christian views of the founders, notes that the intent of the *Danbury* letter was "not to limit religious activities in public; rather they were to limit the power of the government to prohibit or interfere with those expressions." David Barton, *The Separation of Church and State*, available at <http://www.wallbuilders.com/resources/search/detail.php?ResourceID=9> (emphasis in original).
- <sup>184</sup> *Id.*
- <sup>185</sup> As a Jefferson scholar suggests, "perhaps the wall was intended to have a few doors and windows in it." Durham, *supra* note 2, at 74.